THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.34865 of 1998

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Dated: 18-08-2005

Between:

P. Dasarath.

...Petitioner.

And

The Regional Manager, APSRTC, Medak District,

and two others.

...Respondents.

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.34865 of 1998

O R D E R:

Though the writ petition is filed aggrieved by the action of the third respondent in issuing the proceeding dated 07-05-1997 and of the first respondent in issuing the proceedings dated 02-03-1998, the main relief sought for is to declare the proceedings dated 02-03-1998 issued by the first respondent insofar as denial of continuity of service and other consequential benefits as illegal and arbitrary.

It is the case of the petitioner that he was appointed as a Driver in the respondent-Corporation in the moth of March, 1991 and his services were regularized with effect from 31-12-1991. While so, since he was not doing well, he took treatment from a Doctor at Sangareddy from 12-11-1986 onwards and applied for sick leave and also submitted a medical certificate to the respondent-Corporation. Thereafter, he submitted extension of leave and his sickness continued till 05-12-1996. Accordingly on 06-12-1996, he reported for duty before the third respondent, who objected for the same without any valid reason, but subsequently he was allowed to discharge his duties. However, the third respondent, without giving any opportunity, passed the order of removal dated 07-05-1997, wherein it was stated that a charge sheet dated 01-12-1996 was issued against the petitioner enumerating two charges, which read as follows:

> *" Charge No.1: For your unauthorised absence to your duties w.e.f. 13-11-1996 to 05-12-1996 resulted cancellation of Services/KMs, besides loss to the revenues of the Corporaiton, which constitutes mis-conduct interims of Regulations 28 (xxvii) of APSRTC Employees (Conduct) Regulations, 1963.*
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> *Charge No.2: For having unauthorizedly absent for 11 days, sick 66 days in addition to availing 20 days leaves from 01-01-1996 to 13-11-1996 which constitutes mis-conduct interms of Regulations 28 (xxvii) of APSRTC Employees (Conduct) Regulations, 1963."*

and accordingly enquiry proceedings dated 18-03-1997 were issued and the Enquiry Officer submitted a report dated 31-03-1997, and that the petitioner failed to submit his explanation to the charge sheet and that as the charges levelled against him were proved, a show cause notice dated 31-03-1997 was issued and as such the order of removal dated 07-05-1997 was passed. The petitioner, neither the charge sheet nor the show-cause notice was served on him before the removal order dated 07-05-1997 was passed by the third respondent and that though he applied sick leave, submitted medical certificate issued by a Government Civil Surgeon and the same was

accepted, the respondent-Corporation on the ground that he had not approached the APSRTC Clinics at Sangareddy, held the charges proved and removed him from service. Aggrieved by the said order of removal, the petitioner preferred an appeal before the first respondent and the same was rejected. The petitioner further carried the matter in review and the first respondent after going through the entire material on record and taking into consideration the past conduct of the petitioner, by order dated 02-03-1998, directed fresh appointment of the petitioner as a Driver.

The learned counsel for the petitioner strenuously contended that once there is no past mis-conduct on the part of the petitioner and the petitioner had submitted a medical certificate issued by a Government Civil Surgeon and satisfied the respondent-Corporation, merely because he had not approached the APSRTC Clinics, the first respondent ought not to have denied the continuity of service and other consequential benefits.

I am in full agreement with the contention of the learned counsel for the petitioner.

Admittedly, it is for the first time mis-conduct was alleged against the petitioner in the charge sheet dated 01-12-996 with regard to absenteeism. In fact, the petitioner produced a medical certificate issued by the Government Civil Surgeon. Therefore, it is not in dispute that the absenteeism is due to sickness of the petitioner. May be the petitioner could have approached the APSRTC Clinic, for that reason he could not be denied continuity of service from the date of his appointment in the month of March, 1991. In view of the same, the punishment imposed against him is disproportionate to that of mis-conduct alleged and the third respondent ought to have ordered continuity of service even without consequential benefits. In fact, it is not for this Court to substantiate what should the proper punishment. However, in view of lapse of eight years, it would suffice to put an end to the litigation here itself.

In view of the above, I am of the opinion that the petitioner is

entitled for continuity of service from the date of his appointment till the date of reinstatement as fresh recruit, and such continuity service of the petitioner shall be reckoned only for the purpose of seniority but not for any attendant benefits viz., notional increments etc.,

The writ petition is accordingly allowed directing the respondents to treat the service of the petitioner from the date of appointment till the date of reinstatement as fresh recruit as continuity of service. However, it is made clear that such continuity of service shall be reckoned only for the purpose of seniority but not for any attendant benefits viz., notional increments etc.,. No costs.

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(**C.V. RAMULU, J)**

Date:18-08-2005

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